

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONALD JAY BIANCHI,

Petitioner,

v.

KAREN BRUNSON,

Respondent.

Case No. C07-5329 FDB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the Court on petition for certificate of appealability.

On March 28, 2008, this Court denied Petitioner's post-conviction habeas corpus petition as time barred. Petitioner has filed a petition for certificate of appealability.

A court will issue a certificate only when a petitioner has made "a substantial showing of the denial of a constitutional right ." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). A petition dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding. Id., at 484-85. Where the district court dismisses a petition on procedural grounds, a certificate of appealability "should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a


1 valid claim of the denial of a constitutional right and that jurists of reason would find it debatable  
2 whether the district court was correct in its procedural ruling.” Id., at 484.

3 Petitioner has not met this burden. Petitioner’s assertion that he is entitled to “gap tolling”  
4 and/or relief from the federal habeas corpus statute of limitations contained in the Antiterrorism and  
5 Effective Death Penalty Act, 28 U.S.C. 2244(d), is unpersuasive. The procedural bar is not  
6 debatable.

7 ACCORDINGLY;

8 The Motion for Certificate of Appealability [Dkt. #32] is **DENIED**.

9 DATED this 28<sup>th</sup> day of April, 2008.

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FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE